

Space Act Agreement Template

General Guidance:

Agreements between NASA and a non-government entity are called Space Act agreements. (Interagency agreements also fall under the authority of the Space Act, but the title “Space Act Agreement” is generally reserved for agreements with non-government entities.) This template provides guidance on the preparation of the narrative that forms the bulk of the Space Act Agreements. The preparer of such an agreement should also consult the Reimbursable Handbook, available at <http://rfo.gsfc.nasa.gov/> (under Financial Services Department – Reimbursables).

In addition to the narrative described here, a Space Act Agreement will include an Estimated Price Report (EPR) and any backup material needed to explain the information in the EPR. Guidance for preparing the EPR can be found on the Regional Finance Office web site at <http://rfo.gsfc.nasa.gov/> under Financial Services Department Code 159, Reimbursables.

With few exceptions, all Space Act agreements require advance payment for all costs before NASA can provide any goods or services. NASA will provide a cost estimate to the entity that is receiving the goods or services. This cost estimate is used as a basis for payment. If the cost estimate ends up being less than the actual cost, NASA will provide an invoice for the additional amount. If the cost estimate is higher than the actual cost, and the agency has received excess funds, it will refund the difference after the work is complete.

A narrative document (which may be called a Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), or a Space Act Agreement) is required for all such agreements. All Space Act agreements are considered NASA Headquarters arrangements, and only the NASA Administrator (or his representative) is authorized to execute such agreements.

Preparation and approval of the narrative agreement is generally done before preparation of the Estimated Price Report to give both parties an opportunity to agree on details of the arrangement before costs enter the picture.

For all Space Act agreements, the performing organization will forward the draft agreement to the GSFC Office of Chief Counsel for review and approval.

Once the agreement has been accepted, the performing organization prepares and forwards an Estimated Price Report to the Reimbursable Office at GSFC’s Regional Finance Office. This document instructs the Reimbursable Office how to allocate the funds that will be received among the various Job Order Numbers (JONs) that are set up for the reimbursable work. The Estimated Price Report and the narrative document become part of a *reimbursable package*. This package is forwarded according to the sequence shown on an attached route sheet for the necessary signatures and approvals and detailed in the Reimbursable Handbook. Once this is done, the entire package goes to the RFO for processing.

Travel

If travel will take place as part of the agreement, the performing organization must prepare an itinerary of all anticipated trips. This itinerary should be as detailed as possible and should include the names of the travelers, the destination, purpose, dates and duration of trips, and estimated costs. The requirements for providing travel data are strict to avoid the appearance of abuse and to ensure that direct NASA funds are not paying for the travel.

Note that this itinerary is for travel that occurs as part of a products and services reimbursable agreement. “Travel-only” agreements are different and are addressed in Chapter 6 of the Reimbursable Handbook.

Traveler	Destination	Purpose	Date	Estimated Cost
M. Jadsater	San Francisco, CA	Attend Independent review	11/98 (6 days)	\$1,400
B. Morris	San Francisco, CA	Attend Independent review	11/98 (6 days)	\$1,400
P. Sarris	Albuquerque, NM	Flight test	11/98 (5 days)	\$1,200
J. Olds	Los Angeles, CA	Internal audit	11/98 (4 days)	\$1,200
A. Lerner	Los Angeles, CA	Internal audit	11/98 (4 days)	\$1,200
Total				\$6,400.00

Contents of Agreements

Although no specific sections are required, the following sections are often included in the narrative part of a Space Act agreement.

Title: Agreements may be given a short title stating the type of agreement, the parties, and the agreement’s purpose. Approval signatures may be located on the title page or on a separate page.

Purpose: This section briefly describes the purpose and general scope of the planned activities, the subject of any testing, facilities and equipment to be used, and the objective to be achieved. Often, *a single paragraph is sufficient*.

Authority: The Space Act of 1958 is NASA’s agency-specific authority for Space Act agreements. *Section 203(c) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2463(c))*. It should be used in preference to the Economy Act, which applies to all executive agencies, unless the partnering entity objects.

References and Applicable Documents: Technical and programmatic documents that provide information about the work to be performed or regulations that apply. It is essential to include a date and version for any cited documents to ensure that the appropriate documents are always referenced.

Background: A brief historical background if this is an ongoing partnership relationship or it forms part of an ongoing project.

Scope: A description of the work and deliverables. These can include items such as engineering services, pre-launch support, range safety, etc. The frequency or delivery dates should be noted.

Responsibilities: This section describes the actions to be performed by each party to the agreement, including the type of effort, information, equipment, and personnel to be provided by each. Both NASA's responsibilities and its partner's responsibilities should be delineated clearly.

In all cases, NASA's responsibilities should be based on its use of "reasonable efforts," which means the same as "best efforts" but is the preferred terminology.

Although the amount of detail in this section will vary, there must be sufficient detail to disclose both the core obligations of the agreement and the nature of the resources to be committed for its fulfillment.

Funding or Financial Obligations: This section sets the arrangements for the customer's payments. If any costs are waived or other financial arrangements are made (such as in-kind contributions), these arrangements need to be described. Regulations, published as [FMM 9090](#), require full cost accounting and recovery for reimbursable work unless authorized by statute. Provisions for future cost estimates and for billing should be noted.

Management Interfaces and Points of Contact: The responsible office and specific individuals should be named for all parties to the agreement. This should include as much information as possible such as phone numbers, fax numbers, and e-mail addresses.

Priority of Use: This section ensures that NASA does not become legally committed to perform the activities contemplated according to any schedule stated in the agreement, in the event that other NASA priorities or interests arise. It provides that, in the event of a conflict in scheduling the NASA resources, NASA, at its sole discretion, may determine which usage takes priority.

Liability and Risk of Loss: Every agreement should anticipate and allocate foreseeable risks inherent in the activities that the agreement covers. This means that an agreement must specify, before commencement of any activities, which party bears responsibility in the event the activities result in injury to persons or loss of, or damage to, equipment or facilities. The preparer should consult the GSFC Office of Legal Counsel for assistance in preparing this section.

Intellectual Property: This section addresses the allocation and protection of rights in the following areas: (1) rights in patents and inventions generated or used in the performance of the agreement; (2) data rights; (3) publication of resulting data; (4) handling of data; and (5) release of general information to the public. In addition, it addresses the U.S. government's authorization and consent for use of a third-party's patent or copyright and the ensuing patent indemnification requirement (each of which should be addressed in every agreement). The preparer of the agreement should consult [NPG 1050.1](#), "Space Act Agreements" and the GSFC Office of Legal Counsel for further guidance in this area.

Settlement of Disputes: In agreements involving multiple parties or a long-term commitment of NASA resources, it is advisable to include a disputes resolution clause. As an overall rule, the parties should agree to consult promptly with each other on all issues involving interpretation or

implementation of the agreement. In the case of a continuing dispute, the agreement should outline the specific procedures to be followed.

Applicable Law: This section establishes choice of law. Because NASA is an agency of the federal government, U.S. federal law governs its domestic activities. This should be explicitly stated in the agreement. Language permitting specific state law to govern where federal law is silent should not be incorporated into this clause.

Anti-Deficiency Act: All agreements must include an Anti-Deficiency Act provision that states that promises made by NASA to the other party are subject to the availability of appropriated funds by the U.S. Congress.

Term of Agreement: This section sets forth the effective dates of the agreement, specifying beginning and ending dates. Usually the effective date is the date of last signature but, in all cases, the effective date may not occur before both parties have executed the agreement. Provisions for extension of the agreement should be noted, as should the requirements and procedures for termination of the agreement. Any special milestones, or provision for establishing milestones, should be noted. Because of uncertainties as to rate of progress, the ending date is frequently delineated by some event, such as the date of NASA's acceptance of final payment, or the completion of some test or report.

Right to Terminate: This section should delineate the terms and conditions under which an agreement can be terminated.

Modifications/Amendments: This section states a requirement that any modification to the agreement be in writing, and signed by an authorized representative of each party, usually the signatories or, in some cases, their designees. Furthermore, it is advisable to include a statement permitting only the original signatory the authority to make modifications that result in a commitment of additional NASA resources.

Signatory Authority: This section should include a signature block, as well as the typed name, title, and date of signature for each official. Care should be taken that the signatories have authority to bind the parties. However, no special assertion as to authority is required or recommended.